

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DONNA L. PEACE,

Plaintiff,

vs.

No. 1:15-cv-00083-PJK-SCY

KATIE MACSALKA, a Deputy of the
San Juan County Sheriff's Department, in
her individual capacity; KEN
CHRISTISEN, San Juan County Sheriff in
his official capacity; THE SAN JUAN
COUNTY SHERIFF'S DEPARTMENT
and THE COUNTY OF SAN JUAN;

Defendants.

ORDER GRANTING SUMMARY JUDGMENT


THIS MATTER came on for Defendants' Motion for Summary Judgment filed March 16, 2015. Doc. 13. Upon consideration thereof, the motion is well taken and should be granted.

Plaintiff was shot on January 31, 2012, after law enforcement officials responded to a call indicating that Plaintiff was suicidal. Ultimately, Plaintiff was convicted of two counts of aggravated assault on a peace officer with deadly weapon. N.M. Stat. Ann. § 30-22-22(A)(1). This civil rights action pursuant to 42 U.S.C. §§ 1983 & 1988 followed. Doc. 18 at 1.

Plaintiff concedes that Count 1 of her complaint (alleging excessive force) would be barred by Heck v. Humphrey, 512 U.S. 477 (1994). Doc. 24 at 2–3. Count 2 of the complaint against San Juan County (alleging a custom or policy of inadequate training) is foreclosed because at this point Plaintiff cannot establish a constitutional violation on Count 1. See City of Los Angeles v. Heller, 475 U.S. 796, 799 (1986) (per curiam); Trigalet v. City of Tulsa, Okla., 239 F.3d 1150, 1154–56 (10th Cir. 2001). No evidence suggests that the municipal liability claim is based upon facts that are conceptually or temporally distinct from the excessive force complained of in Count 1. The court declines to stay the case for Plaintiff to pursue an untimely appeal in the underlying criminal case—no showing has been made that such an appeal is likely to result in invalidation of the underlying criminal convictions.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, and DECREED that Defendants’ Motion for Summary Judgment filed March 16, 2015 (Doc. 13) is granted and the complaint and action will be dismissed without prejudice.

DATED this 15th day of May 2015, at Santa Fe, New Mexico.



United States Circuit Judge
Sitting by Designation